

INFORMATION LETTER

Not for Publication **NATIONAL CANNERS ASSOCIATION** For Members Only

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House Passes Bus and Truck Bill

The House on August 1 passed, with amendments, the bill (S. 1629) previously passed by the Senate providing regulation of bus and truck transportation. The bill now goes to the Senate for concurrence in the House amendments.

Corn Crop Conditions

The following information on corn crop conditions is based on reports from canners and indicates the condition of the crop:

ILLINOIS: Weather the past week very favorable for development of sweet corn. Present outlook is for a good pack; early corn particularly looks very good.

INDIANA: Corn is looking fine but perhaps two to three weeks later than usual.

IOWA: During the past two weeks there has been continuous hot weather relieved by occasional showers in only part of the territory. In southwestern Iowa the crop is reported suffering from heat and lack of moisture, elsewhere no such damage is reported. The early yellow varieties are decidedly inferior in stand and condition to the later white varieties. This results directly from the unfavorable conditions during planting and during the early part of the growing season. Present indications are for a yield 10 per cent below average.

MARYLAND: Condition of sweet corn crop very good and while there has been some complaint of lack of moisture in some sections, in general it is expected that there will be a good crop.

MINNESOTA: The very warm weather during the past two weeks has benefitted the corn and prospect is for a normal crop or better. Although there have been some light showers, more rain is needed, as the ears are forming. Local market gardeners report presence of corn ear worm and there is a possibility that this will cut production in canners' acreage. In some sections there is a poor stand on considerable acreage due to cut worms, wire worms and cold weather following planting. Packing will start about August 10th.

NEW ENGLAND: Corn is in excellent condition and prospects indicate normal yields. Packing will probably start about August 25th. The loss of acreage from excess rain is about 5 to 10 per cent.

NEW YORK: Some canners estimate 40 to 50 cases per acre for white corn and 60 to 70 cases per acre of Bantam. A portion of the

planted acreage in New York has been seriously affected by floods and is not likely to produce the yield suggested as the state average. Acreage that has escaped damage from heavy rains looks well but on low ground or ground not well drained corn has turned yellow because of excess moisture. The extremely wet weather has prevented cultivation so that many fields are very weedy.

OHIO: There has been excessive rain with considerable wind damage. Canners report average yield now looks between 55 and 60 cases per acre.

District	Week ended July 23, 1935		Week ended July 30, 1935		Week ended July 31, 1934	
	Temp.	Rain	Temp.	Rain	Temp.	Rain
Maine	72	.0	70	.0	69	2.3
Western New York	77	.3	72	.3	75	1.6
Tri-States	81	2.0	79	.4	82	1.5
South Central Ohio	80	.3	77	.5	82	.3
Central Indiana	79	.3	79	.2	81	.6
Central Illinois	79	.9	81	1.7	79	.0
Northern Illinois, Southern Wisconsin	79	.1	78	.1	73	.3
Southern Minnesota	83	.1	83	.6	71	.2
Northern Colorado	73	.2	79	.2	74	.0
Northern Utah	79	.0	82	.0	84	.1
Northwestern Washington	69	.0	64	.3	64	.0
Southeastern Washington	80	.0	75	.0	82	.0

Canning Cooperative's License Is Restored

The license of the California Canning Peach Growers, San Francisco, the largest peach cooperative in California, controlling approximately 50,000 tons of the present estimated crop of 190,000 tons, has been restored by the Agricultural Adjustment Administration. The license was revoked on January 23, 1935, after this cooperative was found guilty of violations. Since that time the cooperative has been entirely reorganized, and a new board of directors elected, consisting of none who was serving at the time of the violations. In view of these facts, it was decided to restore the license.

Quarterly Survey of Canned Foods Stocks

Distributors' stocks on July 1, 1935, of seven principal canned food items were 33 per cent smaller than those of April 1, 1935, according to reports received in the Foodstuffs Division of the Bureau of Foreign and Domestic Commerce from 430 representative wholesalers. This percentage decline is about the same as that which occurred between the same dates of 1934.

Compared with July 1 last year, distributors' holdings of peaches and pears were substantially larger on a percentage basis. Their stocks of peas, tomatoes, green and wax beans, and pineapple showed little

change as compared with a year ago. Holdings of corn by distributors were 30 per cent smaller, however.

Representative groups of canners reported considerably larger holdings of pears and tomatoes on July 1, 1935, as compared with the same date last year. The other five items were in less supply, with corn showing the greatest decrease—82 per cent.

The movement of pears out of canners' hands during the second quarter of 1935 was 19 per cent greater than that of the same period of 1934. The movement of canned tomatoes was the same as that during the 1934 quarter. Due to the sharply decreased stocks of corn in canners' hands on April 1, 1935, the movement of this item was only 63 per cent of the 1934 second quarter movement. However, this resulted in a virtual clean-up of corn stocks in canners' hands on July 1, 1935.

COMPARISON OF STOCKS OF SEVEN CANNED FOODS IN REPRESENTATIVE
CANNERS' HANDS

(Based on reports from the same firms for each date)

(Compiled from reports from the same firms for each date)					
Commodity	No. of firms reporting	Representative Stocks sold and unsold		Percentage Comparison, July 1, 1935 with	
		July 1, 1935	July 1, 1934	July 1, 1934	July 1, 1933
Cases all Sizes					
Pears	118	*227,054	*237,626	— 4	— 66
Corn	147	178,056	1,020,449	— 82	— 92
Tomatoes	227	684,468	474,979	+ 44	— 19
Green and					
Wax Beans	148	388,200	630,278	— 38	— 42
Peaches	36	1,569,176	1,866,524	— 16	+122
Pears	44	997,088	200,334	+397	+222
Pineapple	5	1,472,739	2,364,633	— 38	+ 23

* Old Pack Stocks

COMPARISON OF STOCKS OF SEVEN CANNED FOODS IN REPRESENTATIVE
CANNERS' HANDS

(Based on reports from the same firms for each date)

Commodity	No. of Firms Report- ing	Representative Stocks sold and unsold		Percent Change Apr. 1, 1935 to July 1, 1935	1935 Second Quarter Move- ment out of Can- ners' Hands Expressed in Percent of 1934 Second Quarter Movement
		July 1, 1935	April 1, 1935		
		Cases all Sizes			
Peas	118	*227,054	744,554	— 70	81
Corn	147	178,056	1,071,980	— 83	63
Tomatoes	227	684,468	1,560,787	— 56	100
Green and					
Wax Beans ..	148	388,200	872,531	— 56	a
Peaches	36	1,569,176	2,242,183	— 30	a
Pears	44	997,088	1,564,254	— 36	119
Pineapple	5	1,472,739	2,229,003	— 34	a

* Old Pack Stocks.

a Not Computed; apparent movement would be disturbed by intervening packs.

**COMPARISON OF STOCKS OF SEVEN CANNED FOODS IN HANDS OF 430
WHOLESALE DISTRIBUTORS**

(Based on reports from the same firms for each date)

Commodity	Representative Stocks [¶]		Percentage Comparison	
	July 1, 1935	July 1, 1934	July 1, 1935 with July 1, 1934	July 1, 1933
	<i>Cases all Sizes</i>			
Peas	664,251	660,690	+ 1	-23
Corn	526,425	756,281	-30	-51
Tomatoes	723,407	733,787	- 1	+ 2
Green and Wax Beans	382,818	397,924	- 4	-14
Peaches	485,608	415,268	+17	-41
Pears	206,219	171,763	+20	+39
Pineapple	425,248	428,167	- 1	-18
Total	3,413,976	3,563,880	- 4	-26

**COMPARISON OF STOCKS OF SEVEN CANNED FOODS IN HANDS OF 430
WHOLESALE DISTRIBUTORS**

(Based on reports from the same firms for each date)

Commodity	Representative Stocks		Percentage Change	
	July 1, 1935	April 1, 1935	April 1 to July 1 1935	1934
	<i>Cases all Sizes</i>			
Peas	664,251	974,636	-32	-32
Corn	526,425	935,709	-44	-36
Tomatoes	723,407	1,181,704	-30	-40
Green and Wax Beans	382,818	513,400	-25	-22
Peaches	485,608	695,132	-29	-34
Pears	206,219	265,836	-22	-23
Pineapple	425,248	518,276	-18	-28
Total	3,413,976	5,074,702	-33	-36

Customer Inquiries Concerning Processing Taxes.

Numerous inquiries have been made concerning the effect of current litigation and legislation in the matter of processing taxes. The following brief analysis is offered for the guidance of members.

In the *Analysis* of the *Schechter* decision circulated by the Association on June 1st, it was pointed out that as the result of that case the constitutionality of the processing tax provisions of the Agricultural Adjustment Act would undoubtedly be questioned, and that pending amendments to that statute would probably be revised to protect this revenue.

When the amendments were re-introduced as H. R. 8492, that bill provided, first, that all taxes already levied were to be legalized and ratified, and, second, that all suits for the collection of such past taxes were to be forbidden. In addition, the processing taxes themselves and certain compensating taxes were specifically to be levied at definite

rates by Congress so that future questions of delegation might be avoided. These provisions were passed by the House on June 18, 1935.

For over a hundred years a federal statute has prohibited injunction suits against the collection of federal taxes on the theory that governmental revenues must be protected and that the constitutional requirement of due process was satisfied if the taxpayer eventually could sue for the refund of the tax and thus have a day in court. Following the passage of the Agricultural Adjustment Amendments by the House, a number of processors brought suits for injunctions against the further collection of processing taxes on the grounds that such taxes were unconstitutional and that the pending amendments would deprive them of their day in court to test this question. They urged that in this situation the statute prohibiting injunction suits should not be applied. To date over one hundred and fifty of such suits have been brought and a great many preliminary injunctions have been issued.

The House provision prohibiting suits for the refund of past taxes had been supported on the theory that the processors had either deducted the amount of such taxes from the prices paid producers or had collected them from their customers. After prolonged debate in the Senate, that body substituted for the House prohibition of all suits for past taxes a section permitting suits where the claimant established that he had neither deducted the tax from the price paid the producer nor added it to the price charged his customers. This was done on the theory that if the processing tax sections were declared unconstitutional, these requirements would prevent undue enrichment of the processors who had escaped the burden of the tax and would protect those who had been unable to pass it on. The Senate also adopted the provisions legalizing and ratifying past taxes. In addition, it provided that in case of suit, the Commissioner of Internal Revenue could examine books and records and turn the information obtained over to the Secretary of Agriculture.

These provisions do not mean that by merely bringing a suit the processor could secure the refund of taxes already collected. Such recovery could be had only (1) if the processing tax sections were ultimately declared unconstitutional and (2) if the courts held that the provisions in the amendments designed to cure constitutional defects were ineffective in accomplishing their purpose. Obviously, by providing that those processors who actually had borne the burden of the tax *could* have a day in court, the Senate revision, if enacted, will destroy the basis for many of the pending injunction suits.

No final legislation has as yet been enacted but the differing provisions of the Senate and of the House forms of H.R. 8492 are now before the Conference Committee for adjustment.

On July 16, 1935 the Circuit Court of Appeals for the First Circuit at Boston, Massachusetts announced its decision that the processing tax provisions of the *unamended* present Act were unconstitutional. The court rested its decision on two grounds: First, that the present Act contained an unconstitutional delegation of power to the Secretary, and second, that Congress had levied the tax not for revenue but as an indirect attempt to regulate production, which regulation was beyond the power of the federal government. This decision will be reviewed by the Supreme Court early next Fall, and if the pending amendments have been passed by that time, their effect in ratifying and legalizing these prior taxes will also be considered. In other words, the pending amendments can cure defects in delegation but obviously can not cure any complete lack of power in the federal government. Despite current comment, it is not possible at this time accurately to predict what the Supreme Court will hold. Moreover, the legality of future processing taxes which, as noted, are specifically levied by Congress at definite rates, is far less open to question.

In the meantime, as the result of all of these events, many canners have received from their customers letters requesting an agreement that if the amount of any past or future processing tax is saved through an injunction, refund, or any other way, such customers shall be given the benefit of this saving.

As a general matter, canners are not subject to processing taxes since there is no processing tax on most of the commodities canned. On certain supplementary materials used in manufacturing, such as sugar, rice, etc., some canners did in 1934 pay floor stock taxes, but at the present time any processing tax on such commodity is usually included in the price for which they are purchased by canners. Consequently, as to these canners' supplies currently being purchased, it would appear doubtful whether the original processors will be able to ask refunds or maintain suits for taxes already paid because they have passed on the burden of the tax. In such case, no saving will accrue to any canner.

In the event that floor stock taxes already paid by canners are held to have been unconstitutionally collected, the canners who paid such taxes will be permitted to claim refunds *only* if they can establish that they have not in fact passed the burden of such tax on to their customers. If this can be shown, it is obvious that no adjustment with such customer will be necessary, since the price he paid did not include the amount of the tax. On the other hand, if the price did include the amount of the tax, the canner will be precluded from recovering it.

It is believed that the foregoing statement will suffice to enable canners to answer any inquiries.

Canned Food Exports in June

Increases were reported in a number of canned food exports for the month of June, 1935, when compared with the corresponding period last year. Decreases were reported in the following items: beef, pork, sausage, corn, soups, evaporated milk, apricots, fruits and salad, grapefruit, peaches, mackerel, and canned fish other than mackerel, salmon, sardines, and shellfish. Below are the monthly statistics as compiled by the Department of Commerce:

Articles	June 1934		June 1935	
	Pounds	Value	Pounds	Value
Canned meats, total.....	1,481,434	\$519,804	600,677	\$187,514
Beef	138,555	45,276	99,760	32,446
Pork	1,191,332	443,343	333,419	115,151
Sausage	105,317	22,926	93,725	26,465
Other	46,230	8,259	77,773	13,512
Canned vegetables, total ..	2,891,581	308,932	5,045,167	572,816
Asparagus	1,924,181	236,768	3,938,607	493,600
Baked beans, and pork and beans	409,451	20,873	432,590	22,997
Corn	95,085	6,893	94,262	8,173
Peas	104,546	8,050	116,412	8,168
Soups	177,093	21,077	130,620	13,090
Tomatoes	67,444	5,032	79,048	5,989
Other	113,781	10,239	253,628	20,799
Condensed milk	1,275,760	160,995	264,677	28,948
Evaporated milk	2,562,243	171,501	2,432,183	158,457
Canned fruits total	12,026,812	\$68,815	16,766,952	1,272,716
Apples and applesauce ..	8,900	467	1,940,457	83,255
Apricots	724,985	54,615	506,904	47,793
Berries, other	13,614	1,548	36,054	3,992
Cherries	21,603	2,295	77,198	8,898
Fruits for salad	2,915,554	295,216	2,060,073	224,888
Grapefruit	3,481,776	187,943	2,029,841	126,525
Loganberries	95,328	8,596	516,556	28,016
Peaches	2,817,561	174,699	2,571,899	181,897
Pears	1,025,741	69,600	5,095,019	413,118
Pineapple	832,630	65,974	1,028,453	136,385
Prunes	24,818	2,482	54,621	3,283
Other	64,342	5,281	159,887	14,666
Canned fish, total	3,824,386	411,491	4,975,896	509,251
Mackerel	286,325	13,440	24,625	1,390
Salmon	1,605,827	235,550	1,629,086	218,336
Sardines	1,519,593	95,810	2,829,549	210,584
Shellfish	202,581	33,867	383,732	67,142
Other	210,060	32,824	168,904	11,799

Philippine Canned Fish Market

According to a report received by the Bureau of Foreign and Domestic Commerce, U. S. Department of Commerce, from the trade commissioner at Manila, canned sardines were imported into the Philippine Islands in good volume during June, 1935. Imports from the United States amounted to 10,500 cases and from Japan 7,600 cases. There appears to be no special reason for the increase except that it is

assumed that stocks are getting low. There were no changes in prices. Seven hundred cases of Japanese salmon and 600 cases of Japanese mackerel were imported in June compared with only 25 cases of salmon and mackerel from the United States. Imports of other fish amounted to 730 cases from the United States and 339 from Japan. The Japanese mackerel season is getting under way, and one boat early in July brought 1,000 cases. Prices for salmon and mackerel were unchanged during June.

Fruit and Vegetable Market Competition

CARLOT SHIPMENTS AS REPORTED BY THE BUREAU OF AGRICULTURAL ECONOMICS,
DEPARTMENT OF AGRICULTURE

Commodity	Week ending July 27		Week ending July 20		Total for season through July 27	
	1934	1935	1935	1934	1935	1935
Vegetables:						
Beans, snap and lima	10	27	17	13,072	9,351	
Tomatoes	221	322	3,763	20,100	18,404	
Green peas	80	125	163	4,795	5,089	
Spinach	4	11	3	7,700	5,473	
All other vegetables:						
Domestic, competing directly ..	1,736	1,655	1,874	111,648	100,343	
Fruits:						
Citrus, domestic	1,744	2,513	2,692	110,490	128,571	
Imports	8	41	25	869	461	
Others, domestic	6,415	3,609	3,671	36,185	25,164	

Inspection of Cannery Tomatoes in Ohio

The Department of Rural Economics of Ohio State University at Columbus has just issued Mimeograph Bulletin No. 82 describing the results of cannery inspection of tomatoes in Ohio for the past five years. Copies are available upon request directed to the University.

The volume of tomatoes bought on grade has steadily increased during this time, according to this publication, and there has been an almost constant improvement in quality. The data upon which the report was based were furnished largely by the supervising inspector of the Federal-State Food Products Inspection Service in Ohio.

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